

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDREW DIVERSEY,

Plaintiff,

vs.

No. 1:12-cv-00651-SMV/KK

**DAVID SCHMIDLY, individually;
RICHARD HOLDER, individually;
CHARLES FLEDDERMANN, individually;
MARTHA BEDARD, individually;
ROBERT FRANK in his official capacity;
CAROL PARKER in her official capacity;
JULIE COONROD in her official capacity; and
RICHARD CLEMENT in his official capacity,**

Defendants.

PLAINTIFF'S AND DEFENDANTS' JOINT MOTION TO STAY PROCEEDINGS

Defendants Schmidly, Holder, Fleddermann, Bedard, Frank, Parker, Coonrod, and Clement, each in his or her respective capacities, and Plaintiff Andrew Diversey respectfully move this Court for an order staying this action (1:12-cv-00651) pending the parties' attempt to determine whether a mutually agreeable settlement may be achieved. In support of this Joint Motion to Stay Proceedings ("Motion"), the parties state as follows.

While this matter has been pending since 2012, its progress has been slowed by Plaintiff's successful appeal of this Court's Order and Judgment of Dismissal (Doc. 34) and an ultimately unsuccessful effort by the parties to resolve the matter before Plaintiff was represented by counsel (Doc. 52). In accordance with this Court's subsequent Order Adopting Amended

Joint Status Report and Provisional Discovery Plan With Changes and Setting Case Management Deadlines (Doc. 67) (“Order”), the parties have engaged in written discovery. The parties seek to take a total of fourteen depositions at this time, including the depositions of all nine parties to this litigation and five other witnesses. At least two of the prospective deponents live out of state and travel costs may be incurred in addition to the costs of the depositions themselves. Before embarking upon numerous costly depositions, the parties’ counsel have discussed whether settlement is a possibility and have determined that all parties would be best served by attempting to resolve the matter before additional costs are incurred.

Counsel for Plaintiff has indicated to counsel for Defendants that Plaintiff has a specific condition for settlement that must be realized before Plaintiff would agree to resolve the litigation prior to trial, specifically, the rescission of the Ph.D. degree that he was awarded by the University of New Mexico. While this is not the only requirement for settlement from Plaintiff’s perspective, it will take time before counsel for Defendants can determine whether this linchpin element of settlement is a possibility. Rescission of a degree may only be accomplished by the Board of Regents of the University of New Mexico as it is the Board of Regents that awards degrees.¹ The Board of Regents meets monthly² and will not be able to consider this element of potential settlement until its next meeting on April 10th at the earliest. In the event the Board of Regents is not able to meet on this element of potential settlement at the April 10th meeting, it is anticipated by the parties that the Board of Regents will meet on this element of potential settlement at the next meeting scheduled to occur on May 7, 2015.

Due to the typically demanding agendas of the monthly meetings of the Board of Regents, the parties respectfully request a sixty (60) day stay of proceedings to explore whether

¹ See Regents Policy Manual 1.1, <http://policy.unm.edu/regents-policies/section-1/1-1.html>.

² See Regents Policy Manual 1.3, <http://policy.unm.edu/regents-policies/section-1/1-3.html>

settlement may be achieved. Counsel for Defendants may need to confer with the Board of Regents more than once, or may not have an opportunity at the upcoming April 10th meeting, which is anticipated to have a very full agenda. The parties are concerned that, without this opportunity, the substantial costs that will result in pursuing discovery will create a substantial impediment to settlement. The parties agree that for the purposes of District of New Mexico Local Rule of Civil Procedure 26.6, Plaintiff will be allowed an additional ten (10) days from the date this Court either denies this Joint Motion to Stay Proceedings or an additional ten (10) days from the time this Court lifts the stay in order to proceed under D.N.M.LR-Civ. 37.1 to address Defendants objections (individually and collectively) to Plaintiffs interrogatories, request for production, and request for admission served on Defendants as of the date of this motion.

The parties are confident that no party will be prejudiced by a sixty (60) day stay of proceedings and believe that, if this settlement attempt is not successful, the case will be able to proceed at the pace imagined by the discovery plan articulated in this Court's Order. In the event that the parties are unable to settle this matter, the parties will submit a Joint Motion to Amend the Scheduling Order and Case Management Deadlines within ten (10) days of the stay being lifted and the parties will work together to schedule depositions and complete discovery so that this matter may proceed to trial.

The parties have further agreed that, if a stay is permitted, they will promptly inform the other party or parties and the Court if it appears that settlement will not be possible so that the stay may be lifted and the litigation may continue without additional delay. No party to this litigation wishes to needlessly prolong the litigation and all parties are interested in bringing the matter to swift resolution; however, the parties believe that it would be in their best interests to potentially conserve resources and use this time to determine whether a mutually agreeable

resolution may be achieved.

WHEREFORE, Defendants and Plaintiff respectfully request that the Court enter an order staying the proceedings in this matter for sixty (60) days while the parties explore settlement, and for all other relief that the Court deems just and proper.

Respectfully submitted,

OFFICE OF UNIVERSITY COUNSEL
THE UNIVERSITY OF NEW MEXICO

By /s/Kimberly Bell
Kimberly N. Bell
Deputy University Counsel
Counsel for Defendants
1 University of New Mexico
MSC05 3440
Albuquerque, NM 87131-0001
505-277-3443
Fax: 505-277-4154
KiBell@salud.unm.edu

and

MICHAEL DANOFF & ASSOCIATES, P.C.

/s/ Brett J. Danoff
Brett J. Danoff
Counsel for Plaintiff
1225 Rio Grande Blvd. NW
Albuquerque, NM 87104
Telephone No.: (505) 262-2383
Facsimile No.: (505) 266-4330
bdanoff@michaeldanoff.com